

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA L. MILEY and DEPARTMENT OF THE ARMY,
DEPARTMENT OF THE ARMY, Fort Sam Houston, TX

*Docket No 01-643; submitted on the Record;
Issued October 3, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty on February 12, 2000.

On April 10, 2000 appellant, then a 58-year-old occupational therapist, filed a claim for an injury sustained on February 12, 2000, a Saturday, when she was undergoing splint fabrication training with Kurt A. Brower. Appellant stated that a chair went out from under her, that she landed hard on the floor on her buttocks and that pain shot up her spine and down her left leg. In a witness statement dated April 18, 2000 Mr. Brower stated that on February 12, 2000 he was teaching appellant splinting techniques, that she began to sit in a chair that slid out from under her and that she landed on her buttocks.

On the reverse side of appellant's claim form, the chief of the occupational therapy service, in a May 3, 2000 statement, indicated that appellant was not injured in the performance of duty, as she "volunteered to use OT [occupational therapy] clinic for self-training on weekend." This supervisor also controverted continuation of pay, stating: "Injury occurred *not* during duty time on a Saturday. Employee was *not* supposed to be in the work area." Appellant's regular work schedule was from Monday through Friday.

By decision dated May 12, 2000, the Office of Workers' Compensation Programs found that appellant was not injured in the performance of duty, as she volunteered to use the clinic for self-training outside her regular duty time.

The Board finds that the case is not in posture for a decision.

Injuries sustained during training for an employee's regular job are generally covered under the Federal Employees' Compensation Act.¹ However, training is not covered if it is

¹ Donna J. DiBernardo, 47 ECAB 700 (1996); Rivieene Levin and Jami Smilgoff (Richard C. and Linda B. Smilgoff), 45 ECAB 391 (1994).

undertaken voluntarily in an attempt to obtain a promotion, as such training has no relationship to the employee's assigned duties.²

The Board is unable to ascertain whether the training appellant was undergoing on February 12, 2000 was related to her assigned duties.³ The training, according to appellant and the doctor providing the training, was in splinting techniques, which appears related to appellant's duties as an occupational therapist. The employing establishment, however, indicated that the training was voluntary and that appellant was not supposed to be in the work area where the injury occurred. On remand, the Office should obtain further information from appellant and the employing establishment to clarify the purpose of the training and whether it was required by the employing establishment. After such further development of the evidence as is necessary, the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated May 12, 2000 is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC
October 3, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

² *Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Milton I. Schlosser*, 34 ECAB 176 (1982).

³ Appellant submitted additional evidence on appeal, but the Board's review is limited by 20 C.F.R. § 501.2(c) to the "evidence in the case record which was before the Office at the time of its final decision."